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Supreme Court, U.S.
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No. 86-686

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

HYDROPOOL and COGENERATION SERVICES, INC., Appellants,

vs.

CALIFORNIA PUBLIC UTILITIES COMMISSION and PACIFIC GAS & ELECTRIC COMPANY, Appellees.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

APPENDICES TO JURISDICTIONAL STATEMENT

VOLUME II (of 3 Volumes)
Appendix G through K

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Excerpts from California PUC Decision
No. 84-08-031,
dated August 1, 1984.

A.82-03-26, et al ALJ/vdl *
[33]

Finally, PG&E asserts that the intent of its petition for modification of D.83-10-093 was to address problems related to existing line capacity and not future area transmission or bulk system upgrades. Although PG&E knew of the constraint problem when the petition was filed, the "transmission constraint situation had no relevance or bearing on the issues contained in the Petition, . . ." (Brief, at p. 17.)

* * *

[42]

All of these facts lead us to the following conclusions. First, the added contract clause did not embody a QF's "existing obligations." If the language was not intended to impose on the QF the cost responsibilities described in Ordering Paragraphs 12.e. or 13, there was no other applicable Commission rule which would have

required a QF to pay for bulk transmission upgrades. At most, Ordering Paragraph 12.a. imposes cost responsibilities on QFs for area upgrades only. The fact that this circumstance was known to PG&E is reflected in the testimony of its witnesses and its decision in its brief not to reassert the applicability of Ordering Paragraph 12.a. or cite the Commission to any other rule embodying the QF's "existing obligations."

By this order, the Commission will make clear that, accepting PG&E's position with respect to Ordering Paragraphs 12.e. and 13, there currently is no requirement for QFs to pay for bulk transmission line upgrades. We will also specifically limit the application of Ordering Paragraphs 12.e. and 13 of D.83-10-093 in the manner described by PG&E. A QF will thus be required to pay only for [43] changes to its own facilities or interconnection facilities to provide safety

conformance with the system modification undertaken independently by the utility after the QF's initial interconnection. As stated to be PG&E's policy, the QF, other than as described above, will not be responsible for the costs of capacity upgrades unless required to accommodate an increase in QF peak capacity. The information to be provided to the QF under Ordering Paragraph 13 shall be limited to the extent of the utility's knowledge prior to the completion of an interconnection study. Our modification of these orders, which will impact other utilities as well, is appropriate since these orders were based on PG&E's recommendations which have been clarified in this proceeding.

With respect to imposing in this order any responsibility for QFs to pay for bulk system upgrades, we feel at this time that such an action would be inappropriate.

> to curtailment [44] rules, pending a final Commission determination in this investigation. (Order I.84-04-077, pp. 2-3.)

Our clarification of Ordering Paragraphs 12.a., 12.e., and 13 in this decision serves to remove the uncertainty regarding the QF's current cost responsibility for bulk transmission line upgrades. In evaluating the proposals for interim solutions solicited in the OII, we will take into consideration our findings and conclusions in this case.

With respect to a final solution adopted in the OII, we wish to emphasize PG&E's current approach to customers comparable to QFs. Because of first year revenues, these customers have in fact never been required to pay for upgrades necessary to provide them with utility service. Even if these revenues had been insufficient, however, the customer would at most have been responsible for area transmission and distribution modifications.

As Clerk testified, any bulk upgrades have been the responsibility of ratepayers as a whole. The fact that PG&E has yet to determine whether or not a similar policy relating to bulk upgrades should be extended to QFs, appears to reflect the utility's understanding that such a policy had yet to be established by the Commission. In any event, it appears that the customer's production of revenues in no way influences their responsibility for bulk system upgrades - it just does not exist regardless of their revenues. Under our current policies a similar rule applies to QFs. We leave final resolution of this issue, however, to the OII.

The added contract language also stated as fact a circumstance which, as we stated in D.84-03-092, has yet to be proved or adduced in any Commission proceeding - "the limited availability of transmission capacity on PGandE's existing system." While the OII

[45] is now the proper forum to adduce the existence or extent of these transmission limitations as they impact QF development, the record in the order to show cause is the basis for our judging whether this statement was substantially correct when it was added to QF contracts. Although Coulter testified that available transmission capacity is always limited, the specific problems affecting QFs were so ill-defined that Meyer, PG&E's chief QF negotiator, refused to even provide QFs the "rough cost estimate" relating to the transmission limitations. Meyer also was unable to identify the modifications for which the QFs would be responsible other than that they would include bulk and area system improvements. These statements as well as other testimony indicate that PG&E's understanding of the scope of its constraints was extremely limited at the time the clause at issue was added to QF contracts.

PG&E has also emphasized that it had informed the Commission staff of its transmission limitations in November 1983 and was advised by the staff that the best response to this problem would be an OII. We have no doubt that the staff, based on the [46] information before it, acted most reasonably. As stated before, the OII has now been issued. PG&E's actions in informing the staff, however, hardly appear to be those of a utility aggressively promoting alternate generation. According to Coulter, the staff could not have determined that a problem existed or the extent of that problem without information from PG&E. Although PG&E stated that it was awaiting direction from the Commission on how to handle the transmission constraint problem, none of its witnesses felt that the Commission could provide that direction without additional information.

Nevertheless, PG&E apparently felt that its only obligation was to impart its initial undocumented findings to the staff, leaving it then to the staff and the Commission to request any additional data needed to provide solutions to the problem. We state the obvious - this data could come from only one source: PG&E, on whose system the limitations exist. At the time of the hearings on the order to show cause, however, PG&E had neither undertaken nor completed any studies beyond its September study defining the problem or seeking solutions. We also question PG&E's commitment to QF's based on its approach to QF transmission planning. While stating the difficulties of transmission planning for QFs, Coulter acknowledged that the study which PG&E completed in September 1983 could have been performed at any time prior to that date. Yet

no such study had been undertaken, no list of QFs like that prepared for the study had ever been requested by the transmission planners, and with two exceptions, no PG&E long-term transmission plan prior to that filed in May 1984 had reflected QF needs.

Coulter explained that only the significant upgrade of the Northwest intertie required such an examination. If, however, as Coulter stated, transmission capacity is always limited, we see no reason for only this latent inclusion of QFs in PG&E's transmission planning. Further, with respect to the 3,200 MW upgrade, we note [47] that PG&E knew of this situation in October 1982, when it commenced its study of the feasibility of accepting that power. Simultaneously with that study, PG&E, of course, could easily have commenced the type of study for QFs which was not initiated until August 1983, but only took little more than one month to complete.

We also note that while PG&E placed great importance on its informing the staff of its transmission limitations, it never informed the staff of its decision to add language to any of its purchase power agreements. Even when a member of the staff suggested a warning, no effort was made to contact that staff member to indicate language relating to the transmission limitations had already been added to PG&E's purchase power agreement. PG&E asserts in its brief that the staff's suggestion regarding the warning points out the logic of PG&E's decision to add the clause.

Regarding PG&E's legal actions, we turn now to the subject of PG&E's petition for modification of D.83-10-093. Given PG&E's interpretation of its request for modification of Ordering Paragraph 8.f., it appears that the Commission did misinterpret PG&E's

actions. PG&E's approach to the maximum rate of power deliveries in contravention to Ordering Paragraph 8.f. predated the issuance of that order.

We also now understand the reasons for an approach different from Ordering Paragraph 8.f. Namely, if a contract is signed prior to an interconnection study being completed, it is impossible to complete that contract provision. We believe that the preferable approach, and the one which we will adopt in this proceeding, is to leave the clause blank with a footnote that the [48] correct number will be entered upon completion of the QF's interconnection study.

The petition, however, still creates problems for us. In its brief, PG&E states that the "transmission constraint situation had no relevance or bearing on the issues contained in the Petition, . . ." (Brief, at p. 17.) Yet, the arguments upon which PG&E

supported its requested modifications of Ordering Paragraph 8.f. and the "first come, first served" procedure appear to reflect the exact opposite. Specifically, PG&E based the need for these modifications on, among other things, the following two statements: (1) "The availability of existing utility line capacity is limited"; and (2) "Since the hearings, PG&E has been confronted with various situations where more than one QF desired to interconnect with its system and existing line capacity would not accommodate all of the proposed projects." These statements appear to be nothing more than another way of saying that PG&E was experiencing "transmission limitations." Further, such limitations would have had a significant impact on a procedure designed to allocate the remaining line capacity. Obviously, an explanation of PG&E's transmission constraint problem, as known to

PG&E's attorney at the time the petition was filed, would certainly have enhanced the Commission's understanding and response to the request. It may have even provided some of the guidance of which PG&E stated it was and is still in need.

We are also concerned about some of the decisions which it appears PG&E's legal department made in choosing the issues to be raised before the Commission in the petition. During the hearings, Clerk testified that PG&E could not in fact comply with Ordering Paragraph 13, the order which governs the information to be supplied by the utility to the QF relating to "future system modifications." Clerk and his attorney discussed certain limited circumstances under which Clerk thought PG&E might be able to comply with Ordering [49] Paragraph 13. However, not only was this position not in keeping with that taken by PG&E in the

compliance hearings, but it was also acknowledged by Clerk that, in his opinion, the ordering paragraph actually required more than such limited compliance.

Despite Clerk's testimony that he had "discussed the difficulty in complying to Order Paragraph 13 with representatives of our legal department," a request to amend the order accordingly is conspicuously absent from PG&E's petition for modification. Again, an understanding of PG&E's limited ability to comply with Ordering Paragraph 13 would have greatly assisted the Commission in its effort to draft rules responsive to the needs of both QFs and the utilities.

We cannot conclude definitively that the actions taken by PG&E in its general rate case or this proceeding in response to its transmission limitations demonstrate an intent to mislead the Commission in contravention of Rule 1 of our Rules of Practice and

Procedure. They do, however, reflect a utility which does not approach QF development with any sense of urgency. PG&E must appreciate our need for information which only PG&E can provide in order for the Commission to properly evaluate particular situations and adopt appropriate rules. Control over this information lies predominately with PG&E. To the extent that this information is either withheld, intentionally or unintentionally, or processed slowly, our rules cannot be kept responsive to QF and utility needs. The end result in this case, of course, is that QF development is not furthered, but hindered.

We note also that while the disputed language was added only to nonstandard contracts, PG&E was actively dispensing warnings about its transmission limitations in all of its negotiations involving QFs larger than 100 kW who were without interconnection studies or would not become immediately

operational. In fact, the contract language was initially drafted for the larger QFs [50] irrespective if whether the agreements to be signed were standard offers or not. In all cases, PG&E's employees were urged to memorialize the understanding of PG&E's transmission limitations and a QF's cost responsibility for the needed improvements.

All of these circumstances point to a need for this Commission to once again reiterate its rules governing standard offers and QF development and to modify certain rules to ensure that all parties to QF negotiations understand their requirements. Ordering Paragraph 12.a. will therefore be modified to reflect its application to area transmission and distribution lines only. Ordering Paragraphs 12.e and 13 will be modified to further define "future system modifications" and identify the information which can be provided to a QF signing a contract prior to

the completion of an interconnection study. Ordering Paragraph 8.f. will be modified to indicate the course of action which should be followed in the absence of an interconnection study.

We will take no futher action with respect to our "first come, first served" approach to existing line capacity since that issue has been raised by PG&E in I.84-04-077. Any changes to that procedure can be litigated in that forum during which all parties will have an opportunity to present evidence on the issue.

By this order, we will also provide further guidance on the subject of negotiated contracts. Our orders will be based on our prior discussion in this decision.

In closing, we conclude that we cannot find PG&E in contempt of our orders as described in D.84-03-092 or D.84-03-093. We find that we have insufficient proof of intent to violate our orders.

We do, however, have a record which does not justify the assertion by PG&E of an aggressive commitment of QF development. In PG&E's last general rate case, we had two recommendations by the staff for rate of return penalties related to PG&E's actions in [51] signing and negotiating contracts with QFs. In one case, we rejected the recommendation on the basis of an absence of "demonstrable evidence." In the other case, we found staff's position not entirely in keeping with our policy against favoring one QF technology over another. This record, however, coupled with these recommendations seriously undermines our confidence that PG&E in fact is promoting QF development and that it is not following a course of "systematic bad faith negotiations."

We are therefore faced with the need of ensuring the most careful scrutiny of PG&E's actions. We find that in the near future we will have three opportunities for such

scrutiny - A.82-04-44, PG&E's long-term standard offer application, with hearings commencing in that and related applications on July 23, 1984; I.84-04-077, the investigation into PG&E's transmission limitations; and ultimately, PG&E's next general rate case. We will take these opportunities to thoroughly examine PG&E's QF programs. We note further that the next recommendation of rate of return penalty by the staff or any other party related to PG&E's handling of QF development will be given our highest priority and closest scrutiny.

Findings of Fact

* * *

[56] 35. The testimony in the order to show cause hearings demonstrates that PG&E's understanding of the scope of its transmission constraints was extremely limited at the time the clause at issue was added to QF contracts.

36. PG&E's actions in informing the staff of its transmission limitations do not appear to be those of a utility aggressively promoting alternate generation. Neither the Commission nor the staff could have understood the extent or complexities of PG&E's transmission limitations without information being provided by PG&E.

[57] 37. PG&E's commitment to QFs is also made questionable by its approach to QF transmission planning. Prior to September 1983, despite PG&E's apparent ability to include QFs in transmission planning and studies, no study had been undertaken, and no list of QFs like that used for the September 1983 study had ever been requested by PG&E transmission planners. With two exceptions, no PG&E long-term transmission plan prior to that filed in May 1984 had reflected QF needs.

38. If transmission capacity is always limited, no reason exists for the latent inclusion of QFs in PG&E's transmission planning as described in Finding 37. A study of QF needs could have been included in PG&E's study of the feasibility of a 3,200 MW upgrade of the Northwest intertie. This study was commenced in October 1982.

39. The staff was never informed by PG&E of its decision to add the subject clause to its power purchase agreements or the language of that clause.

* * *

[58] 44. There is no conclusive evidence that PG&E intended in its general rate case or this proceeding to mislead the Commission regarding its transmisison limitations.

45. PG&E's actions reflect a utility which does not approach QF development with any sense of urgency and is not aggressively committed to that development.

* * *

[59] 50. Insufficient evidence exists of an intent by PG&E to violate this Commission's orders as described in D.84-03-092 and D.84-03-093.

51. Sufficient evidence does exist, however to require careful scrutiny of PG&E's actions and programs impacting QF development in future Commission proceedings. Three of these proceedings are A.82-04-44, I.84-04-077, and PG&E's next general rate increase application.

* * *

ALJ/md

Decision 84-08-037 August 1, 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the transmission system operations of certain California electric corporations regarding transmission constraints on cogeneration and small power production development.	)	I.84-04-077 (Filed April 18, 1984)

(Appearances are listed in Appendix A.)

I N T E R I M O P I N I O N

Summary

We essentially approve an interim solution proposed by the Commission staff, Pacific Gas and Electric (PG&E), and various small power producers for the alleged transmission constraints in the Northern Portion of PG&E's transmission system. An interim solution is needed to allow small power production and cogeneration to proceed in PG&E's northern transmission system while this proceeding is pending.

Procedural Background

On April 18, 1984, the Commission issued Order Instituting Investigation (I.) 84-04-077 and began its investigation of the electric utilities' transmission systems to determine whether transmission limitations may exist which will constrain the development of cogeneration and small power production (QFs). PG&E, Southern California Edison (SCE), San Diego Gas and Electric (SDG&E), Pacific Power and Light (PP&L), and Sierra Pacific Power (Sierra Pacific) companies were named as respondents to I.84-04-077 and were required to file statements assessing the likelihood and the extent of transmission system limitations which may emerge over the next 10 years due to QF development. Each Utility duly filed a statement for its service territory.

[2] PG&E stated that it currently expects the capacity of parts of its northern bulk and area transmission systems to be exceeded at times during the next 10 years due to QF development.

SCE stated that it anticipates no limitations on its bulk or subtransmission system over the 10-year period 1984-1993 which will constrain QF development.

SDG&E stated that it forsees possible limitations in two of its area sub-transmission systems over the next 10 years due to QF development.

PP&L stated that it anticipates no limitations on its existing and planned bulk and area transmission system due to QF development in California. Sierra Pacific also stated that it does not anticipate any transmission limitations over the next 10 years due to QF development.

From the utilities' filed statements, it appears that a significant constraint on QF development may exist in PG&E's northern transmission system. Both PG&E and various small power producers have informed the Commission staff that limitations on PG&E's northern transmission system do exist which will restrict QF development.

The Commission staff realized that if limitations do exist in PG&E's northern transmission system, then some QF development could be slowed and even stopped while I.84-04-077 was pending. Accordingly, the Commission staff held a series of publicly noticed workshops attended by the utilities and interested QFs. The purpose of the workshops was to examine the expected limitations in the utilities' transmission systems and to devise an interim solution for any limitations. At these workshops, PG&E presented a number of interim solutions which

would accommodate QF development in its northern transmission system while I.84-04-077 was pending. Starting with PG&E's presentation, the participants to these workshops then [3] began negotiating an acceptable interim solution for the limitations in PG&E's northern transmission system. The Commission staff, PG&E, and designated QF representatives were the key negotiators.

The first Prehearing Conference (PHC) for I.84-04-077 was held on June 22, 1984. At this PHC, the Commission staff, PG&E, and the designated QF representatives announced that a stipulation had been reached on an interim solution for PG&E's northern transmission system. The Administrative Law Judge (ALJ) ruled that the stipulation should be served upon all parties to I.84-04-077 by July 3, 1984. The stipulation was mailed to

the parties on July 5, 1984. The ALJ further ruled that written comments on the stipulation would be considered. These comments were to be served on the parties by July 13, 1984.

A second PHC was held on July 17, 1984. At this second PHC, the stipulation and the written comments were reviewed. The parties also were permitted to make oral statements on the stipulation and to respond to the written comments.

We now will turn to the stipulation and the comments received on the stipulation.

The Stipulation

The stipulation has been signed by PG&E, the Commission staff, and Independent Energy Producers (IEP). Several QF representatives participated in the negotiations although only IEP is a signatory to the stipulation. The stipulation has been entered in the formal file for I.84-04-077. [4] The essential terms of the stipulation are as follows:

1. The stipulation applies only to QFs located in the Northern Portion of PG&E's service area who sign a power purchase agreement with PG&E during the interim period.

2. The stipulation will be in effect until the Commission issues a final decision for I.84-04-077.

3. Affected QFs will be assessed 1.7 mills/kWh for power received by PG&E, payable only on kWh generated at operating levels up to a 60% capacity factor (monthly basis). Of this amount, .5 mills/kWh is nonrefundable. All or some of the remaining 1.2 mills/kWh will be refunded if the Commission determines in its final decision for I.84-04-077 that QFs' cost responsibility for transmission upgrades is less than 1.7 mills/kWh. The affected QFs cost responsibility will not exceed 1.7 mills/kWh for the entire life of their projects.

4. PG&E shall institute all necessary operational changes to accommodate QF power. Such changes may include noneconomic dispatch of its resources.

5. The maximum MW of QF power that may be interconnected under the terms of the stipulation is limited in each northern area as follows:

Shasta Cedar Creek	31 MW
Shasta Battle Creek	54 "
De Sabla Caribous and De Sabla Feather River	140 "

De Sabla Paradise	65 MW
Colgate	30 "
North Bay Northern*	100 "
North Bay Southern	480 "
Humboldt	90 "
TOTAL	990 MW

* Depending on location, 30 MW can be added prior to completion of upgrades.

[5]

6. Available transmission capacity shall be allocated on a first come, first served basis, as defined in D.83-10-093, Ordering Paragraph 12(c).

7. PG&E shall proceed with all necessary area transmission upgrades and shall file an application for the required bulk transmission upgrades.

The purpose of the stipulation is twofold. First, the stipulation gives QFs certainty about their cost responsibility for transmission upgrades while I.84-04-077 is pending. QFs requiring capacity in PG&E's northern transmission system will know that their cost responsibility cannot exceed 1.7 mills/kWh for the life of their projects. Second, PG&E agrees to make the operational

changes necessary to accept QF power. Without such changes, QF deliveries would be curtailed when other resource availability exceeds transmission capacity in PG&E's northern transmission system.

Comments on the Stipulation

The following parties submitted written comments on the stipulation: California Energy Company (Cal Energy), Northwest Power Company (Northwest), Trans-Pacific Geothermal (Trans-Pacific), Cogeneration Services, Inc. (Cogen), Aeolus Wind Farms (Aeolus), MCR Goethermal Corporation (MCR), City of Santa Clara (Santa Clara), Pacific Lighting Energy Systems (Pacific Lighting), SCE, SDG&E, GeoProducts Corporation (Geoproducts), and Nevada Geothermal Transmission Study Group (Nevada Group). PG&E also submitted a list of corrections and minor modifications to the stipulation. All of these comments have been entered in the formal file.

The comments submitted by PG&E and Northwest were accepted by the signatories to the stipulation. Accordingly, they are incorporated into the stipulation without further discussion.

Cogen and GeoProducts ask that the stipulation be modified to include all QFs located within and outside PG&E's service territory that are affected by transmission constraints in PG&E's Northern transmission system. Independent Power Corporation (Ind Power) made an oral statement at the second PHC requesting the [6] same modification. The Commission staff and PG&E orally opposed this modification and urged the Commission to restrict the stipulated interim solution to those QFs located within PG&E's northern service territory.

Cal Energy, Trans-Pacific, and Nevada Group, each filed written comments requesting that the stipulated interim solution be expanded to include SCE. Each of these goethermal energy developers assert there are transmission limitations in SCE's Eastern Division which could constrain geothermal energy development.

Aeolus filed a written comment stating that SDG&E has had transmission limitations which affected wind farm developers in SDG&E's service area.

SCE and SDG&E filed similar comments stating that the stipulation applies only to PG&E and does not bind other utilities.

Finally, Santa Clara, MCR, Pacific Lighting, and SDG&E, in their comments supported the stipulation and suggested clarifying language. The Commission staff and PG&E did not accept the suggested clarifications.

Discussion

At the outset, we must commend the Commission staff for its initiative in organizing the workshops and for its perseverance in negotiating the stipulation with PG&E and the QFs. The Commission staff through it efforts has demonstrated that it will carefully [7] balance the competing interests of QFs, utilities, and ratepayers in this proceeding.

The success of the stipulation is evident. Very few written comments protesting the stipulation were received even though it was served on all appearances to I.84-04-077, A.82-03-26, and A.82-04-44. Of these protests, only one (Cogen, GeoProducts, Ind Power) would require a substantive change in the stipulation.

Cogen, GeoProducts, and Ind Power ask only that the stipulation be modified to include QFs who may not be located in PG&E's

service territory but nonetheless are affected by the capacity limitations in the northern transmission system. Such QFs are located in the service territories of utilities or municipal utility districts adjacent to PG&E's service territory. These QFs intend to wheel their power through the adjoining service territories to PG&E.

Cogen argued at the second PHC that it would be discriminatory if the Commission should adopt a stipulated interim solution which is available only to QFs located in PG&E's service territory. Cogen points out that the adopted interim solution will control QF development around PG&E's northern transmission system while I.84-04-077 is pending, and therefore is a very important factor in negotiations between QFs and PG&E. Cogen maintains that there is no legal basis for extending an interim solution to QFs located within PG&E's service territory and for excluding QFs outside the territory.

The Commission staff and PG&E responded that they were unwilling to extend the stipulated interim solution to QFs outside of PG&E's northern transmission system because this particular issue was not addressed in the negotiating sessions. Both the Commission staff and PG&E were concerned that unknown amounts of QF power could displace more economic power if the in-service area restriction is removed. PG&E emphasizes that no studies were made of the financial [8] impact of QF deliveries from outside the service territory. Therefore, the negotiators of the stipulation could not have considered the financial impact of these QF deliveries on PG&E's transmission system.

Cogen replied that QF development outside the service territory of PG&E is limited and should not result in the inundation of QF deliveries feared by the Commission staff and

PG&E. Moreover, Cogen stated it was willing to stipulate to a maximum delivery from QFs outside the service territory if this would alleviate the Commission staff's and PG&E's concerns.

We find that any interim solution should be afforded to all QFs affected by potential transmission constraints in PG&E's northern system. At this time, we do not have sufficient cause to differentiate between QFs located within PG&E's service territory and those located beyond the utility's service boundaries. Both groups of QFs are willing to deliver power to PG&E's system under the same pricing formulas. Their similarity to the utility is confirmed by PG&E's distinction of its planning area from its service territory. Apparently, PG&E already has considered the impact of some QF's outside its service territory that are located in CP National's service territory and in municipal utility

districts. These QFs are within what PG&E calls its planning area, which extends beyond its service territory. Therefore, PG&E in its plans for QF deliveries has not distinguished between QFs located within and those located outside its service territory. We believe, as does PG&E in its planning, that there is no meaningful distinction between these QFs and will modify the stipulation as requested.

However, we also find merit in the concern expressed by the Commission staff and PG&E that unlimited amounts of QF deliveries from outside PG&E's service territory could displace large amounts of more economic power. PG&E's ratepayers could suffer large losses if such displacement is permitted. This problem can be solved by [9] specifying a maximum MW level of QF development that may be interconnected under the interim solution. In this way, the ratepayer's exposure can be limited to the consequences that the

negotiating parties were able to evaluate. We will choose as the maximum level the total of the area capacity limitations agreed to by the negotiating parties in the stipulation or 990 MW. With this ceiling, the total MW of QF development that may be interconnected pursuant to the interim solution cannot exceed 990 MW. Once this total level is reached, PG&E shall no longer be obligated to interconnect QFs under the terms of the stipulated interim solution. The MW levels for the individual northern areas specified in the stipulation are still applicable.

Subject to these two modifications, we approve of the stipulation negotiated by the Commission staff, PG&E, and QFs representatives and will adopt it as an interim solution.

Findings of Fact

1. PG&E expects to experience bulk transmission constraints in the Northern Portion of its service area.

2. PG&E expects to experience area transmission constraints in six operating divisions: Humboldt, Shasta, De Sabla, Colgate, North Bay and Drumm.

3. Because of these transmission constraints, PG&E at times may be physically unable to accommodate the delivery of some QF power in addition to the energy and capacity commitments PG&E already has made.

4. PG&E can accommodate this QF power on an interim basis by changing its operating practices.

5. QFs assert that uncertainty about their cost responsibility for transmission upgrades will hinder the development of QF power in Northern California; this uncertainty will persist while I.84-04-077 is pending unless the Commission adopts an interim solution.

[10] 6. The Commission staff, PG&E, and QF representatives have stipulated to a proposed interim solution which will remove some of the uncertainty about cost responsibility for transmission upgrades until I.84-04-077 is decided.

7. QFs inside PG&E's service territory and QFs outside of PG&E's service territory may be affected by transmission constraints in PG&E's northern system.

8. Any interim solution should be afforded to all QFs affected by transmission constraints in PG&E's northern system.

9. To protect PG&E's ratepayers from the displacement of more economic power, the maximum level of QF power that may be interconnected under the interim solution should be 990 MW.

Conclusions of Law

1. The stipulated interim solution and this interim order do not predetermine any of the issues to be addressed in I.84-04-077.

2. All parties to I.84-04-077 were given an adequate opportunity to review the stipulation, file written comments, and make oral statements at a public hearing.

I N T E R I M O R D E R

IT IS ORDERED that:

1. The interim solution proposed in the stipulation of the Commission Staff, PG&E, and QF representatives is modified as follows:

   a. The interim solution will be applicable to all QFs affected by transmission constraints in the Northern Portion of PG&E's service territory.

   b. No more than 990 MW of QF power may be interconnected by PG&E under the terms of the stipulated interim solution.

   c. The changes in the stipulation prepared by PG&E and Northwest are incorporated into the stipulation.

2. The modified interim solution is approved and shall remain in effect until further order of the Commission.

This order is effective 30 days from today. Dated August 1, 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
DONALD VIAL
Commissioners

Commissioner Priscilla C. Grew, being necessarily absent, did not participate.

Commissioner William T. Bagle, being necessarily absent, did not participate.

List of Appearances

Respondents: Peter W. Hanschen, Michael S. Hindus, and Jo Ann Shaffer, Attorneys at Law, for Pacific Gas and Electric Company; Manning W. Puette, Attorney at Law, for San Diego Gas & Electric Company; Margaret A. Glodowski, Attorney at Law (Nevada), for Sierra Pacific Power Company; R. K. Durant, Carol B. Henningson, and Susan L. Steinhauser, Attorneys at Law, for Southern California Edison Company; and Wayne P. Sakarias, Attorney at Law, for San Diego Gas & Electric Company.

Interested Parties: Brian Sway, for Capitol Oil Corporation; Thomas R. Sparks, for Union Oil Company of California; Robert N. Kittle, Attorney at Law (Pennsylvania), for Navy Department; Steve Cohn, by David Mundstock, for California Energy Commission; Jane S. Kumin, Attorney at Law, for Natomas Company and Thermal Power Company; Linda Fain, for California Department of Water Resources; Harry K. Winters and John C. Catton, for University of California; John C. Lakeland, for himself; David L. Ludvigson, Attorney at Law, for California Energy Company, Inc.; James Kaiser, for Sierra Energy and Risk Assessment; Kelly Runyon, for City of San Francisco; Peter M. Strauss, for Fayette Manufacturing Corporation; Rufus S. Scott, Attorney at Law (Colorado and Texas), for Phillips Petroleum Company; Shirley S. Nowicki, for Sun Geothermal Company; Fred E. John and Thomas Clarke,

by Gay M. Phillips, for Southern California Gas Company; Douglas Porter, for Pacific Lighting Energy Systems; William B. Marcus, for California Hydro Systems, Inc.; Roy Alper, Attorney at Law, for Independent Power Corporation; Robert Tormey, for Pacific Hydro Company; R. Lee Roberts, Attorney at Law, for Hanna & Morton; Norman Ross Burgess, for himself; Jan Hamrin, for Independent Energy Producers; Michel Peter Florio and Jon F. Elliott, Attorneys at Law, and Sylvia M. Siegel, for Toward Utility Rate Normalization (TURN); Mark Lyons for Ultra Systems, Inc.; David Branchcomb, for Henwood Associates, Inc.; Karen Rohier, for Aeolus Wind Farms, Inc.; Jon Castor, for himself; Patrick Moast, for the California Department of Water Resources; Reed V. Schmidt, for himself; Messrs. Pettit & Martin [2] by Edward B. Lozowicki, Attorney at Law, for Cogeneration Services, Inc.; W. Randy Baldschun, for City of Palo Alto; Gary L. Fontana, Attorney at Law (Washington, D.C.), for Northwest Power Company; and Elizabeth Henderson and Laura King, for Natural Resources Defence Council.

Commission Staff: Diane Fellman, Attorney at Law, and Julian Ajello.

(END OF APPENDIX A)

Excerpts from California PUC Decision
85-01-039, dated
January 16, 1985

OPINION ON LIMITED REHEARING

Background

On November 21, 1984, the Commission granted a limited rehearing of Decision (D.) 84-08-037 on two issues: (1) whether the interim solution adopted in D.84-08-037 should apply to Qualifying Facilities (QFs) located outside of Pacific Gas and Electric Company's (PG&E's) service territory whose output would flow on the Pacific Northwest-Pacific Southwest 500 kV Intertie north of Round Mountain Substation (Intertie), and (2) whether access to PG&E's Drum Division transmission facilities should be reviewed and reallocated.

On December 7, 1984, a prehearing conference (PHC) was held to determine the positions of the parties interested in these two issues. PG&E, Independent Energy Producers Association (IEP), Public Staff

Division (staff), Cogeneration Services (Cogen), Southern California Edison Company (Edison), California Energy Company (CEC), and San Diego Gas & Electric Company (SDG&E) took positions on the Intertie issue. Mac Hydro Power Company, Inc. and Enviro Hydro, Inc. (Mac Hydro), Northwest Power Company (Northwest), PG&E, Auslam Associates (Auslam), and staff took positions on the Drum Division access issue.

[2] At the PHC, the Administrative Law Judge (ALJ) directed PG&E to present a witness on December 17, 1984 explaining why PG&E seeks to exclude the Intertie from the interim solution adopted in D.84-08-037. PG&E also was directed to meet with Cogen prior to the December 17 hearing for informal discovery.

With respect to the Drum Division access issue, the ALJ requested Northwest to provide copies of certain documents underlying Northwest's claim of priority in the Drum

Division. Mac Hydro and Northwest were allowed to submit briefs on the Commission's rules for establishing priority between QFs competing for limited transmission capacity.

On December 17, 1984, an evidentiary hearing was held. PG&E presented one witness, John E. Kerler, on the Intertie issue. After cross-examining PG&E's witness, Cogen made an offer of proof, describing the testimony and other evidence Cogen would sponsor, given the opportunity, on the Intertie issue. The ALJ then directed PG&E and Cogen to file statements assessing the impact of a Commission order releasing the transmission capacity currently held for Cogen to QFs on the waiting list and deferring resolution of the Intertie issue to the primary hearings on QF access to the Intertie.

QF Interconnection to the Intertie

The stipulation drafted by PG&E, staff, and IEP was applicable only to QFs located within PG&E's northern service area. Several QFs opposed the in-service area restriction and asked that the terms of the stipulation be extended to QFs outside of PG&E's [3] northern service area that are affected by expected transmission constraints in PG&E's northern system. In D.84-08-037, the Commission modified the stipulation and removed the in-service area restriction. The Commission stated that:

> "We find that any interim solution should be afforded to all QFs affected by potential transmission constraints in PG&E's northern system. At this time, we do not have sufficient cause to differentiate between QFs located within PG&E's service territory and those located beyond the utility's service boundaries." (D.84-08-037, p. 8.)

On August 20, 1984, PG&E tendered to the Docket Office an application for rehearing of D.84-08-037. This application for rehearing was not docketed but was filed two days later

as a petition modification of D.84-08-037.[1] In its petition for modification, PG&E joined by IEP asked the Commission to exclude the Intertie from the terms of the stipulation. The Commission in D.84-11-13 issued November 21, 1984 granted a limited rehearing on this issue.

At an evidentiary hearing held December 17, 1984, PG&E's witness explained why the company believes the Intertie should be excluded from the stipulation. According to this witness, PG&E expects to use all of its capacity entitlement on the Intertie for the purchase of Northwest economy power. During the first ten months of 1984, PG&E used about 95% of available capacity on the intertie. [4] PG&E asserts that 100% use is prevented

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[1] It is unclear whether the mere presentation of an application for rehearing rather than filing of the pleading by the Docket Office invokes a 60-day suspension period under Public Utilities Code Section 1733(a).

by minimum load hours, late reallocations of Intertie capacity, and BPA curtailments. PG&E submits that because of its expected use of the Intertie, no capacity on the Intertie is available to QFs.

Although PG&E's capacity entitlement on the Intertie may increase in February, 1985 and sometime in 1986, PG&E claims that enough Northwest economy power will be available through 1988 to use all additional capacity.

Finally, PG&E asserts that interruptible capacity cannot be made available to QFs since PG&E is contractually obligated to offer any interruptible capacity to municipals.

In summary, PG&E seeks to exclude the Intertie from the stipulation because QF interconnection to the Intertie may displace Northwest ecomony power. PG&E believes that all available capacity on the Intertie should be used for the transmission of economy power.

Cogen, in its offer of proof, indicated it was prepared to dispute PG&E's assertions on a factual basis and as a matter of policy. Cogen believes that PG&E's forcast of available Northwest economy power is overstated. Since the forecast is based on unusual weather conditions, Cogen presumably would seek to show that QF interconnection to the Intertie may not result in a one-to-one displacement of economy power if a more balanced forecast is made. Cogen also believes that QF offers of long-term firm supplies should not be rejected in favor of predictions of short-term economy power purchases. Thus, Cogen would argue that firm QF deliveries should not even be compared to economy power purchases.

[5] From the limited hearing permitted by the ALJ, we can see that QF interconnection to the Intertie raises complex questions of fact and broad policy issues. We are reluctant to

resolve, even on an interim basis, such a significant matter through an expedited hearing to which only a few parties are actively participating. Accordingly, we will continue the Intertie issue to the primary hearings on the bulk transmission issues to be set during March 1985.

If we should find after hearing that QF interconnection to the Intertie should be permitted, then we reserve for Cogen the possibility that interconnection can occur under the terms of the stipulation. The 1150 MW ceiling may be raised to accommodate the projects for which Cogen has acquired priority within the current ceiling. At the same time, we direct PG&E to release the transmission capacity currently reserved to Cogen to the next QF projects on the waiting list. We see no reason why this capacity which is attributable to non-Intertie transmission upgrades or other altered operating practices should be held pending our decision on this matter.

* * *

[9]

Findings of Fact

1. PG&E believes that QF interconnection to the Intertie will result in the displacement of Northwest economy power.

2. Cogen is prepared to dispute PG&E's forecast and argues that long-term firm QF supplies should not be compared to short-term economy power purchases.

3. The question of QF interconnection to the Intertie should be addressed in the primary hearings on the bulk transmission issues to be held in March, 1985.

* * *

[10]

Conclusions of Law

1. Resolution of the Intertie issue should be continued to the primary hearings in this proceeding so that all parties may fully participate on this matter.

* * *

Excerpts from California PUC Decision
No. 85-04-075,
dated April 17, 1985

COM/mra

Decision 85-04-075 April 17, 1985

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Second Application of PACIFIC GAS & ELECTRIC COMPANY for Approval of Certain Standard Offers Pursuant to Decision No. 82-01-103 in Order Instituting Rulemaking No. 2	Application 82-04-44 (Filed April 21, 1982; amended April 28, 1982, July 19,1982, July 11, 1983 and August 2, 1983)
And Related Matters	Application 82-04-46 (Filed April 21, 1982; amended May 12, 1982, July 11, 1983, and August 10, 1983)
	Application 82-04-47 (Filed April 21, 1982; amended July 11, 1983 and August 2, 1983)

I N T E R I M O P I N I O N

I. Summary

This decision continues the suspension of Payment Option No. 3 of interim Standard Offer (SO) 4 for Qualifying Facility (QF) projects

over 50 megawatts (MW), which had been ordered earlier for Pacific Gas and Electric Company (PG&E) and Southern California Edison (SCE). It also extends the suspension of projects over 50 MW to Payment Option No. 3 of interim SO 4 for San Diego Gas and Electric Company (SDG&E). It presents two options for comment regarding continued availability and terms of all Payment Option No. 1 and Payment Option No. 2, and of Payment Option No. 3 for projects less than 50 MW, prior to availability for a final long-run standard offer.

[2] In assessing whether the existing standard offers continue to provide a reasonable protection for ratepayers, we have relied primarily on the utility filings of the results of project information questionnaries sent to QFs as part of our adopted Interconnection Priority Procedure (IPP), and

on the information contained in the utilities' most recent Quarterly Status Reports (QSRs) containing data current through the end of 1984. We conclude that the capacity payments in the interim SO 4 and the energy payments in Payment Option No. 1 and Payment Option No. 2 of the interim SO 4 would over-value additional QF projects not already under contract to the utilities. This is true for all sizes of QF projects and for SDG&E as well as for PG&E and SCE.

The Public Staff has recommended an immediate suspension of all payment options of interim SO 4 for PG&E and SCE until a final SO 4 is available, unless prices are adjusted to reflect current conditions. We agree with Public Staff that further study is needed of the implications of large cogeneration projects over 50 MW for utility resource planning purposes. Because of the potentially large impact of such projects on system

avoided costs, we prefer that they not be allowed to sign Payment Option No. 3 until we understand more fully the utilities' long-run costs avoided by such projects as part of Phase II of the current long-run pricing proceeding.

Such caution does not appear warranted for other projects, however. Because of our continued wish to encourage cost-effective QF development, and because of the continued uncertainty regarding how many signed QFs will actually complete their projects and operate successfully, we are reluctant to suspend interim SO 4 entirely. At the same time, because of our desire to not delay further the development of a final SO 4, we see only one other realistic approach to providing for the protection of ratepayers at this time: that is for us to modify the interim SO 4 prices offered to new QFs which have not yet signed contracts to a level which reflects the value of additional QF projects more realistically.

This action would [3] maintain the availability of interim SO 4 contracts for most projects while final SO 4 terms are being developed, yet not unduly delay the final SO 4 proceedings.

With this in mind we present a method for adjusting the capacity payments in PG&E's and SCE's interim SO 4 contracts, based on calculations provided by our staff at the request of the assigned Commissioner, and detailed in Appendix A. The capacity payments in SDG&E's interim SO 4 would be modified to those adopted for its SO 1 and SO 2 in its most recent general rate case. We also propose that the energy payments in Payment Option No. 1 and Payment Option No. 2 be reduced by 10 percent, but conclude that no adjustment to the incremental energy rates in Payment Option No. 3 for projects under 50 MW is warranted at this time.

The revised interim SO 4 contracts would be in effect for each utility only until a set amount of new QF capacity enters into contracts, standard or non-standard, with the utility. That amount is 1,250 MW for each of PG&E and SCE and 200 MW for SDG&E, counted from April 17, 1985. At that point, all of interim SO 4 would be suspended for that utility until a final long-run standard offer becomes available. Projects signing revised interim SO 4 contracts would have to comply with the milestones adopted in our Interconnection Priority Procedure.

We provide for a workshop on May 3, 1985, in which staff will be available to answer any questions parties may have regarding the calculations underlying the capacity adjustments, and for parties to file written comments by May 10, 1985, stating whether they prefer complete suspension of interim SO 4 or implementation of the capacity and energy

payments presented in this decision. Based on the filed comments, we plan to choose between the two approaches by June 5, 1985.

To prevent a "gold rush" of projects wanting to sign the current interim SO 4, we suspend all payment options of interim SO 4, effective immediately, pending further Commission action.

* * *

[15] It is obvious that significant changes have occurred in the energy markets since the negotiating conference was held in June 1983. Natural gas prices have stabilized and even fallen, and further reductions are quite possible. In Table 5, the incremental costs of natural gas to PG&E, Southern California Gas Company (SoCal), and SDG&E are shown. PG&E and SDG&E have experienced substantial price reductions in the last 20 months, and if the effects of inflation were removed, Table 5 would show that SoCal's incremental cost of

gas has also decreased, in real terms. There are at least two other easily available comparisons which provide a measure of changes in the utilities' avoided energy prices: The rates which utilities pay for natural gas for use in their own generating units (Table 6) and the avoided cost prices paid to QFs [16] operating with short-run standard offer contracts (Table 7). Natural gas rates for electric generation have declined for all three utilities, from 2 percent to 17 percent. SCE's and SDG&E's short-run avoided cost energy payments have declined substantially, by 11 percent and 15 percent respectively. PG&E's energy payments have increased dramatically, due to higher incremental energy rates adopted in its December 1983 general rate case decision. However, as pointed out in Table 7 (see also Table 14), that rate case decision also authorized PG&E to reduce its short-run

avoided cost energy payments about 20 percent after Diablo 1 and Diablo 2 become commercially operable. At current gas prices, these payments would be reduced to about 5.4 cents per kilowatt-hour, which is about 7 percent less than the June 1983 level.

While we do not know what energy price forecasts were relied upon by the parties to the negotiating conference, we suspect that they did not predict the current turn of events. Thus, the energy components of interim SO 4 may be overstated. The rapid rate at which PG&E and SCE have signed interim SO 4 contracts indicates that the overall pricing terms, including both capacity and energy provisions, may be seen as very favorable by QFs.

If significant amounts of additional QF projects are allowed to sign contracts with the prices currently offered, ratepayers may indeed, as PG&E and SCE assert, be required to pay more for the capacity and electricity than

is reasonable. Because of this possibility, we agree with PG&E, SCE and our staff that some action must be taken to protect ratepayers. The partial suspension cannot merely be allowed to lapse.

* * *

[22] As described in Appendix A, additional capacity is valued based on utility reserve margins under each of three scenarios. Additional capacity was assumed to have the full value of a gas turbine in any year in which the reserve margin without it would fall below 20 percent, and to have no value if the reserve margin without it would be greater than 35 percent. The assumed capacity value varies linearly between the value of a gas turbine and zero for reserve margins between 20 percent and 35 percent. For each scenario, staff provided a table of levelized prices for a 1,000 MW block of additional firm capacity.

In Table 8, we present some of the results for PG&E and SCE for the scenario of 80 percent QF development. For this scenario, application of the above formula indicates that the capacity value of [23] a QF signing a 20-year contract for firm operation beginning in 1986 should be 35 percent of that in PG&E's current interim SO 4 if it signs with PG&E but 78 percent of that in SCE's interim SO 4 if it signs with SCE. This striking difference between the capacity value of additional capacity to the two utilities carries over to the other scenarios analyzed as well. Comparable results for the 30 percent QF development scenario still show capacity values to be only 50 percent of PG&E's current interim SO 4 capacity payment, but 93 percent of SCE's, for a QF committing to 20 years of firm operation beginning in 1986.

Because of the large amounts of QF projects which have signed contracts with PG&E

and SCE since interim SO 4 was negotiated, and because our analysis of the effects of such capacity indicates that the value of additional QF capacity to the utilities and ratepayers is significantly less than the capacity payments now in interim SO 4, we conclude that the capacity payments in PG&E and SCE's interim SO 4 should be adjusted if it continues to be available for new projects. Since large amounts of QF projects are still under discussion, we conclude further that update capacity payments should be based on allowing 1,000 MW of additional capacity to enter into contracts (standard or non-standard) with the utility.

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Excerpts from California PUC Decision
No. 85-06-163,
dated June 27, 1985,

A.82-04-077, et al. ALJ/vdl

[2]

OPINION ADDRESSING PETITIONS FOR MODIFICATION OF DECISION 85-04-075

On April 17, 1985, the Commission issued Decision (D.) 85-04-075 in Application (A.) 82-04-44, et al. This decision followed a series of orders suspending portions of interim Standard Offer 4 for utility purchase of electricity from qualifying facilities (small power producers or cogenerators). A description of the procedural history leading to D.85-04-075 is fully recited in that order and need not be repeated here.

By D.85-04-075, the Commission ordered the suspension of Interim Standard Offer 4 in its entirety for Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E). The suspension for

qualifying facility projects of greater than 50 MW under Payment Option #3 of the standard offer was made "for an indefinite period." For all other projects proposed under Standard Offer 4, the suspension was made effective until further order of the Commission. D.84-05-075 itself was made effective the date of issuance (April 17, 1985).

In additional to the suspension of interim Standard Offer 4, D.85-04-075 also directed the Commission's Public Staff to conduct a workshop on May 3, 1985. At this workshop, Public Staff would explain and answer questions regarding revisions proposed by D.85-04-075 to energy payments under Payment Options #1 and #2 and capacity payments under all interim Standard Offer 4 payment options. Interested parties were given the opportunity to file written comments no later than May 10, 1985. By these comments, the parties were to state their

preference for the indefinite suspension of all of interim Standard Offer 4 or the implementation of revised energy and capacity payments proposed in D.85-04-075.

In addition to the numerous comments which have been received in response to D.85-04-075, the Commission, beginning on [3] May 9, 1985, has received multiple petitions for modification of the decision. To date, the following filings have been made: 20 petitions for modification filed by interested parties, two petitions for modification filed by utilities, four interested party responses to the utilities' petitions, three utility responses to interested party petitions, and a Public Staff Division (Public Staff) response to the petitions as a whole. The Commission's review of the comments is discussed in another decision to be issued shortly, while the subject of the petitions and related responses is reserved to this order.

The common thread joining most of the petitions for modification is the issue of whether an interim Standard Offer 4 signed by a qualifying facility, but not the utility, prior to April 17, 1985 (the effective date of D.85-04-075) is a valid contract for the sale of electricity.[1] While certain of the petitions present variations on this issue (e.g., a fully negotiated agreement which the utility had not signed), the focus of all of these petitions concerns the time of contract formation - a critical factor in the face of the suspension of interim Standard Offer 4.

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1 The petition filed by the State Department of General Services does not raise this issue, but rather seeks an exemption from any interim Standard Offer 4 suspension for certain State facilities. This petition is more appropriately addressed in the order dealing with comments on the suspension and is therefore discussed in a separate decision to be issued shortly as a companion to this order. The petition filed by the Los Angeles Sanitation District is also addressed in that decision since its concerns are directed to the propriety of the suspension itself.

In the petitions, a number of interested parties refer to the utility statements made during the May 3 workshop. According to these petitions, the utilities, in particular Edison and PG&E, had represented that each had received numerous interim Standard Offer 4 agreements signed by qualifying facility in the weeks and days prior to the issuance of D.85-04-075. In PG&E's view, this action was [4] taken by qualifying facilities in response to the rumor in that community of the imminent suspension of interim Standard Offer 4.

In all cases, except those identified in Edison's petition, Edison was able to complete and sign the agreements which were submitted to it by the qualifying facilities. The same was apparently true for SDG&E. PG&E, however, indicated that it had not signed most of the agreements submitted in this manner.

In reviewing the petitions, we will commence with a summary of the petitions filed by PG&E and Edison. These petitions identify the general nature of the problem, the total number of agreements involved, and each utility's response. SDG&E did not file a petition, but rather a response to the petition of an interested party. While this response discloses the utility's position on the issue, we will reserve a summary of its contents for our section dealing with responses to petitions. This summary follows our review of the interested party petitions.

We note that several parties also submitted comments and letters on the issue of the unsigned standard offers. We believe that the petitions present a full description of and the potential approaches to the issues. This decision will, therefore, focus on those pleadings.

I. Petitions for Modification

A. Utility Petitions

1. PG&E

In response to the numerous contracts submitted to it prior to April 17, PG&E decided not to take "extraordinary measures" to execute these agreements, but rather to follow its normal procedures. According to PG&E, these procedures include confirmation that the qualifying facility has demonstrated site control and completed a questionnaire, both requirements of the Qualifying [5] Facility Milestone Procedure (QFMP).[2] After determining compliance with the QFMP, PG&E next confirms that the submitted agreement has been adequately and

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2 The QFMP is a procedure to establish interconnection priority among qualifying facilities. The procedure was adopted in D.85-01-038 in Order Instituting Investigation (I.) 84-04-077, this Commission's investigation into transmission constraints impacting qualifying facility development.

correctly completed and reviews and approves any requested nonstandard language.

Between January and April 1985, PG&E received a total of 157 purchase power agreements. Of this number, 64 were "fully executed," which PG&E defines as signed by both the qualifying facility and the utility. The other 93 were signed by qualifying facilities, but not by PG&E, before April 17. PG&E believes that these 93 agreements fall into five basic categories:

1. Twenty-six contracts involving projects attempting to switch from Standard Offer 1 to interim Standard Offer 4 which were signed by PG&E on the morning of April 17 before D.85-04-075 was known to the utility.

2. Six contracts received by PG&E one week before the decision, but not signed by the utility by April 17. Three had failed to provide proof of site control, one requested non-standard language which required additional time to approve, and two were delivered on April 5 and 9 to "a coordinator who was out of the office during this period." (PG&E Petition, p. 4.)

3. Forty-four contracts received on April 12, 15, and 16 which PG&E states it did not have enought time to process and sign. Fifteen of the 44 contracts failed to provide proof of site control.

4. Five contracts signed by qualifying facilities before April 16, but received by PG&E between April 17 and April 23.

[6] 5. Twelve projects which "unsuccessfully" attempted to switch from Standard Offer 1 to interim Standard Offer 4.

PG&E states in its petition that its decision not to sign or deliver these contracts was based on (1) discussion during the Commission meeting on April 17 regarding the uncertain status of the tendered agreements and (2) the conclusion in D.85-04-075 that capacity and energy payments under Options 1 and 2 of interim Standard Offer 4 would overvalue additional qualifying facility projects not already under contract to the utilities. Under these circumstances, PG&E states that "a Commission order requiring PG&E to buy the block of power

represented by the contracts in question under the terms of the now suspended SO #4 would result in overpayments and would not provide the needed flexibility of dispatch." (PG&E Petition, pp. 5-6.) PG&E therefore asks the Commission to modify D.85-04-075 "to make clear that tendered SO #4 contracts not signed by PG&E before April 17 do not constitute valid executed contracts and PGandE [sic] no obligation to execute them." (Id.)

If its position is not adopted, PG&E suggests five alternatives as "equitable" solutions to the problem These alternatives include (1) a direction by the Commission that all tendered contracts be executed, but that the QFMP procedure be met within 60 days; (2) Commission authorization of only those contracts which have been the subject of ongoing contact and discussions with PG&E; (3) the offer of the revised Standard Offer 4, if adopted, to the 93 qualifying facilities at

issue here; (4) the establishment of a cut-off dat for tendered contracts (e.g., five days prior to April 17); or (5) the review of special circumstances in response to individual qualifying facility petitions or complaints.

2. Edison

In its petition, Edison states that between April 1 and April 17, 1985, it received numerous purchase power agreements from [7] qualifying facilities. During that time period, Edison reviewed these agreements for accuracy and executed more than 85 purchase power agreements. In executing this large number of agreements, however, Edison states that it "overlooked" two projects -- the China Lake Joint Venture No. 2 and Coso Geothermal Company. Edison notes that both projects are represented by California Energy Company, Inc.

According to Edison, on January 1, 1985, California Energy Company, Inc. submitted to Ediso executed interim Standard Offer 4 agreements for

the two projects. At that time, however, California Energy Company, Inc. did not supply the proof of site control, project description, and preliminary development schedule required under the QFMP. The necessary information, however, was received by Edison on April 1, 1985.

Edison states that these facts demonstrate that all of the prerequisites to Edison's execution of these agreements, including a "meeting of the minds," had been satisfied prior to April 17, 1985. Edison's failure to sign the agreement prior to April 17 was solely the result of its heightened activities to ensure that all agreements were executed. Edison therefore asks that the Commission issue an order confirming that these two qualifying facility projects not be made subject to the suspension order in D.85-04-075 and that the agreements be ordered executed.

* * *

[13] 15. Cogeneration Services - Cogeneration Services presents facts somewhat different than those contained in the preceding petitions. Cogeneration Services represents 14 projects for which it tendered contracts to PG&E. These projects, however, were the subject of a petition for modification by PG&E of D.84-08-037. This petition addressed the applicability of the Commission's interim solution to transmission constraints to these projects. A hearing on this matter was ordered, and PG&E has declined to process these contracts until the matter is resolved.

> Cogeneration Services asks that it be made clear by the Commission that D.85-04-075 was not intended to apply to these agreements. Any other conclusion would, according to Cogeneration Services, be grossly inequitable since these projects have long been ready to proceed, but have been delayed only by the Commission's own process.

* * *

[18]

C. Responses to Petitions

1. Utility Responses

a. PG&E

While stating that it does not waive its right to address the petitions on an individual basis, PG&E responded to the

petitions as a whole. PG&E states that the interested party petitions should be denied because they are based on flawed legal arguments. In particular, PG&E asserts that traditional contract law does not govern standard offers. According to PG&E, "standard offers are the product of regulation, not free negotiation between parties, and as such they are subject to the continuing authority of the regulatory agency, not to the traditional law of contracts." (PG&E Response, p. 3.)

In support of this assertion, PG&E states that the Commission has expressly rejected the intent of the parties as a determinative factor in resolving standard offer disputes and has unilaterally ordered changes to existing, fully executed contracts between PG&E and qualifying facilities. PG&E cites D.84-08-031, Finding of Fact 17, and D.84-03-092, Ordering Paragraph 20,

respectively, in support of these assertions. PG&E further states that even if the qualifying facilities' offer-and-acceptance analysis [19] were applicable to standard offers, the Commission would have continuing jurisdiction to modify or terminate the contract as the public interest requires. PG&E contends that this rule, applicable to agreements with public utilities, is a recognized exception to the impairment of contract prohibition.

PG&E also states that in not signing the contracts and filing a petition, it was not in violation of any law or Commission decision. PG&E further asserts that its actions were not a deliberate attempt to reject Standard Offer 4 agreements. Rather, PG&E contends that the petition was a legitimate response to Commission statements at its April 17 meeting regarding uncertainty

about the status of the agreements and the Commission's concern with the impact of the agreements on ratepayers.

The only petition to which PG&E specifically responds is that filed by Cogeneration Services. PG&E states that the Commission should not be misled by Cogeneration Services' claim that the pendency of Commission action on the applicability of the QFMP to the Cogeneration Services agreements is the only reason for its contracts not being executed by PG&E. PG&E states that these contracts were also flawed because they involved qualifying facilities outside PG&E's service territory to whom the standard offers do not apply, they were completed incorrectly, and they were otherwise deficient. For these reasons, PG&E does not believe that the Cogeneration Services' agreements should be exempted from the operation of D.85-04-075.

b. Edison

Edison's response is directed exclusively to the petition of Energy Distribution. Edison states that it has no mandatory requirement that the purchase power agreement and the interconnection agreement be completed simultaneously, as claimed by Energy Distribution. Edison states that Energy Distribution's [20] requested purchase power agreements were not executed by Edison because they failed to comply with the QFMP. In particular, Edison has never received proof of site control or a completed project definition. Under these circumstances, Edison asks that the Commission deny Energy Distribution's request that the subject purchase power agreements be executed by Edison.

c. SDG&E

Although SDG&E entitled its filing as a response to Mega Renewable's

petition, it is actually a general statement on the issue of the agreements which were not signed by PG&E. SDG&E states that it "is clearly not the case" that Standard Offer 4 constitutes a legal offer under common law. According to SDG&E, the standard offer is merely a contract form which has numerous conditions precedent to the utility's signature and execution of the agreement. These conditions include satisfying the QFMP requirements (site control), filling in the standard offer blanks correctly, and having the agreement approved by utility corporate management. SDG&E states that the Commission's D.85-02-038, which adopted the QFMP, established the utility's "discretion" to screen qualifying facility projects prior to the utility deciding to enter a purchase power agreement.

* * *

[23] 3. Public Staff Response

Public Staff believes that "[g]iven the abundance of QF capacity, ...it is reasonable to require the utilities to sign contracts only for those QFs which PG&E and SCE were prepared to sign and any other projects which can meet the requirements of the QFMP." (Public Staff Response, p. 3.) Public Staff also notes that switching between Standard Offer 1 and interim Standard Offer 4 should be allowed only if the requirements of D.83-09-054 are met. In D.83-09-054, we stated that "QFs under standard and nonstandard contracts, with provisions clearly allowing them to switch, may switch after a final standard offer comes into existence after hearing, but for the time being they will have to honor their commitment under the contracts they entered." (D.83-09-054, p. 17.)

II. Discussion

The disparate positions of the utilities and qualifying facilities on the subject of PG&E's unsigned agreements require the Commission first to review the requirements of our decisions affecting standard offer contract formation. This step is necessary since we intend our findings and conclusions in this decision to be based on those orders.

Our issuance of D.82-01-103 on January 21, 1982, in Order Instituting Rulemaking 2 marked the inception of the standard offer. As that decision states, federal and state law mandated the Commission to implement the requirement of electric utility purchases of energy and capacity from qualifying facilities. In establishing the guidelines for such utility purchases, we ordered the utilities to file five standard offers "each of which would be a complete contract which small power producers could sign without

negotiations." (D.82-12-120, p. 3.)

[24] In defining the standard offer in D.82-01-103, we found that the rate for the power purchase had "relevance only in relation to the mutual obligations of the parties." (D.82-01-103, p. 24.) The nature and extent of those obligations were to be defined by the standard offer. We further concluded:

> "The term 'standard offer' is itself an oversimplification. This decision directs that each utility offer a choice of contracts at the seller's option. These choices are intended to be economically equal over the life of a contract." (Id., p. 29; emphasis added.)

This discussion was the basis for Finding 26 and Ordering Paragraph 25 of D.82-01-103. The finding defines the standard offer as "a choice of contract terms at the QF's sole option." (Id., p. 148.) The orders direct that the "standard offer shall be available to all QFs for acceptance and shall be consistent with the terms and conditions provided for in this decision." (Id., p. 162; emphasis added.)

The standard offers governed by D.82-01-103 included Standard Offers 1, 2 and 3, based on the utility's short-run marginal costs and the subject of A.82-03-26, et al., as well as Standard Offer 4, based on the utility's long-run avoided costs and the subject of the instant applications. Evidentiary hearings to approve and establish the contract terms of Standard Offers 1, 2 and 3 followed the issuance of D.82-01-103. The series of decisions which resulted from those evidentiary hearings also impacted Standard Offer 4. Not only did the decisions further define the concept of the standard offer, but many of the terms of Standard Offers 1, 2 and 3 were incorporated in the interim Standard Offer 4 which was adopted in D.83-09-054.

Each of the utilities was not only an active participant in the evidentiary hearings establishing the terms of Standard Offers 1, 2

and 3, but also the negotiating conference which led to the [25] adoption of interim Standard Offer 4. The key concern of all of the orders resulting from both proceedings was the establishment of the mutual obligations of the parties. These contract terms were to be binding on the utility and altered only by the Commission or by a qualifying facility if it sought a nonstandard agreement.

In response to requests for uniform standard offer language, in both D.83-10-093 (A.82-03-26, et al.) and D.83-09-054 (A.82-04-44, et al.) we rejected the utilities' argument that the Commission's role was not to write contracts for the utilities. We concluded instead that uniform standard offer language should be used by all utilities except for terms which must clearly be utility specific because of substantive differences between the utilities. We directed the

utilities and staff to work together in proposing one form of contract for each of the four standard offers. (D.83-10-093, pp. 74-75; D.83-09-054, pp. 21-22.)

In D.83-10-093, we also rejected proposals (1) that certain portions of the standard offers be negotiable, (2) that the utilities be authorized to alter nonprice provisions without jeopardizing the standard offer's status, and (3) that the standard offer status be extended to those contracts whose terms vary from the standard offer. (Id., p. 78.) Our action was premised in part on the conclusion in D.82-01-103 that utility costs incurred and prices paid under the standard offers are per se reasonable and recoverable in ratemaking proceedings. We were not willing to guarantee such cost recovery when terms were not identical to those which we had approved. We noted,

however, that the risks of nonrecovery become proportionately less when the variations from the standard offer are only slight. (D.83-10-093, p. 77.)

In D.84-03-092, the Commission was faced with a factual circumstance which appeared to indicate that PG&E had failed to [26] follow prescribed standard offer procedures. Most notable was PG&E's apparent addition of language to its standard offers which the Commission had never reviewed or approved. In addition to finding such a term null and void, we also concluded that a unilateral change to a standard offer by a utility without this Commission's review or approval was actionable by a complaint to the Commission. (Findings 54, 59, p. 91.) PG&E's apparent violations resulted in our issuance of an Order to Show Cause why PG&E should not be held in contempt for its failure to comply with Commission orders. (D.84-03-093.)

Following hearings on the Order to Show Cause, the Commission issued D.84-08-031. In that order, we concluded that PG&E should not be found in contempt of this Commission having either not violated the orders of the Commission or not having had the requisite intention to violate these orders. PG&E's actions, however, were the basis for restating and modifying certain commission rules governing interconnection between qualifying facilities and utility-qualifying facility negotiations. The offers to which PG&E had added the language were found to be negotiated, nonstandard agreements. However, PG&E's approach to these negotiations required the Commission to reiterate and more fully developed the "good faith" bargaining required of the utility in such negotiations. Specifically, Ordering Paragraph 3 of D.84-08-031 states:

> "All utilities shall follow the guidelines set forth at p. 106 of D.82-01-103 in negotiating contracts with

> QFs. The utility's role in these negotiations shall be limited to responding to a QF's proposed modification of the standard offer with counterproposals which are related to the QF's proposed modification and, in the utility's view, are necessary to maintain the economic balance of the standard offer. A proposed modification to a standard offer by a QF shall not result in making all terms of the offer or agreement negotiable. A utility's failure to follow these guidelines shall be evidence of its failure to negotiate with the QF in good faith."

[27] The only Commission orders cited by PG&E in support of its position not to sign the agreements tendered by qualifying facilities before April 17 relate to the Order to Show Cause. We agree with Oakland Scavenger that the references upon which PG&E relies neither stand for the propositions for which they were cited nor are they relevant to the issue of contract formation. In D.84-08-031, we did not, as asserted by PG&E, reject the parties' intent as a basis for contract language interpretation, but in fact found that evidence of a particular intent would "[require] us in turn to accept that

interpretation of the language." (D.84-08-031, p. 39.) In this regard, we found that PG&E had presented insufficient evidence to support its claim that both parties to the negotiation intended the disputed contract provision to be a "notice" clause, an interpretation favored by PG&E.

In its response PG&E also cites D.84-03-092. This order was referenced in support of PG&E's assertion that we had previously unilaterally ordered changes to existing, fully executed contracts between PG&E and qualifying facilities. By the ordering paragraph cited by PG&E, however, we did not retroactively modify the terms of any agreement. Rather, the order was directed at prohibiting PG&E from unilaterally modifying standard offers by adding contract language to those offers. (D.84-03-092, Ordering Paragraph 20, p. 100.) Our declaration in that order that any such provision was a

nullity was intended to reflect our commitment to our prior orders preventing utility additions to the standard offer, to remove the offending clause, and to restore the agreement to its proper form. As noted above, the questioned agreements were later found to be nonstandard offers to which additions could be made, but for which PG&E was obligated to bargain in good faith.

With respect to the argument that this Commission has continuing regulatory authority over the standard offers, we believe that our approach to the "regulatory authority" clause suggested for inclusion in interim Standard Offer 4 is particularly relevant. As [28] proposed by the utilities, this clause would have provided that the contract would "at all times be subject to such changes as any regulatory agency may direct in the exercise of its jurisdiction." (D.83-09-054, at p. 39.) According to the clause, any conflict

between the contract's provisions and changes directed by the agency would require the parties to amend the contract in conformance with those changes.

In reviewing this clause, we concluded that it should be removed from Standard Offer 4. This decision was based on our holding in D.83-09-054 that "[a]ny changes made to this standard offer in the future will only apply to those contracting after such changes." (D.83-09-054, p. 3.) We had also found that, other than conformance with certain terms adopted for Standard Offers 1, 2 and 3, "[a]ny other ordered changes to Standard Offer #4 will be for prospective application only in new contracts." (Id., Ordering Paragraph 1, p. 57.) We therefore concluded:

> "In view of our holding that contracts entered under Standard Offer #4 will not be subject to retroactive change based on prospective developments in the continuing saga of pricing QF power, we think the regulatory authority clause should be deleted. . . . [T]he quid pro quo for giving QFs certainty with respect

to all contract terms, and eliminating the regulatory authority clause, is that QFs may not freely switch to other contracts later, until their contract term is up, if subsequent contracts or terms appear more favorable. . . . In ordering the clauses removed we recognize that we cannot order retroactive changes to interim Standard Offer #4 contracts..." (Id., pp. 39-40; emphasis added.)

No matter what our continuing regulatory authority could have been, we clearly elected in D.83-09-054 not to exercise such authority with respect to Standard Offer 4 on a retroactive basis. In suspending the standard offer in D.85-04-075, we have honored this commitment to alter that offer on a prospective basis only. We intended, as the interested parties state in their petitions, that [29] the suspension would apply only to those QFs who had not signed an interim Standard Offer 4 agreement before April 17, the effective date of D.85-04-075.

For those offers signed by qualifying facilities before April 17, the sole issue then is when contract formation took place. In the case of a standard offer, we believe

that our prior orders have provided us with clear directions on this issue. Those decisions, as recited above, demonstrate that the standard offer is to be a contract in the "traditional" legal sense and not just a form requiring further utility negotiation or approval. The "offer and acceptance" theory of mutual assent to contract terms is precisely the approach we adopted for the standard offer. The terms of the agreement are those which the utility is obligated to offer, which the utility has participated in crafting, and from which no utility can deviate, except in the case of a nonstandard agreement. The offer embodying those terms is to be extended by the utility to all qualifying facilities for their "acceptance." Once accepted, the utility is to have no discretion in refusing the agreement or altering its terms. A contract is formed with the qualifying facility's acceptance of those

terms which would be indicated by a standard offer completed and signed by the qualifying facility and delivered to the utility.

Utility practice in "reviewing" these agreements, as explained in their filings, is evidence of their understanding of this adopted approach. Except for implementing the requirements of the QFMP, discussed below, the utility's review has been limited to determining whether the qualifying facility has properly filled in the blanks and signed the agreement. Obviously, the qualifying facility cannot be said to have "accepted" the offer until it has performed these tasks. However, when it does, a "meeting of the minds" would occur with the result that the utility's signature on the agreement becomes a mere formality which necessarily follows. [30] The only exception which can arguably be asserted to this approach to standard offer contract formation was created this year in

I.84-04-077. This proceeding, which was separate from the standard offer applications, was noticed as the Commission's investigation into utility transmission system operations "regarding transmission constraints on cogeneration and small power production development."

In I.84-04-077, a committee comprised of representatives of utilities, qualifying facilities, and Public Staff prepared a "milestone procedure" to measure the progress of each qualifying facility's development. The procedure, originally designated an interconnection priority procedure (now QFMP), established a priority among qualifying facilities for line capacity according to the date on which the qualifying facility completed all of the following three items: (1) a project definition, including proof of site control; (2) an interconnection study

request; and (3) the payment of a $5/kW project fee into an escrow account.

We state in the decision that one of these criteria, "project definition, including proof of site control, must be provided prior to signing a PPA [purchase power agreement] or requesting an interconnection study" (D.85-01-038, p. 4). No mention of this requirement, however, is made in the procedure itself which we appended to the decision and adopted in the sole ordering paragraph.

It is only in the "Interconnection Priority Policy Questions & Answers," Appendix B to D.85-01-038, that any mention is made of the qualifying facility's signature of a purchase power agreement being conditioned upon meeting any QFMP criteria. This appendix first indicates that qualifying facilities not located in a constrained area must meet their development schedules. (D.85-01-038, App. B, p. 3.) Under the heading "Screening Criteria,"

it also states that the QFMP requirements of project definition, [31] including proof of site control and a preliminary development schedule "must be provided prior to signing a power purchase agreement or requesting an interconnection study." (Id., p. 5.)

While I.84-04-077 had first been initiated to establish a priority among qualifying facilities seeking limited line capacity, by the time D.85-01-038 was issued the scope of the proceeding had broadened. Specifically, we had by that time found four uses of the procedure: (1) to determine which qualifying facilities were entitled to limited transmission capacity; (2) to establish on-going statewide interconnection priority procedures; (3) to determine the current status of qualifying facility development in the state; and (4) to establish an on-going tracking of qualifying facility development to aid in transmission and resource planning.

These last two purposes would obviously be served by imposing limitations or conditions on the qualifying facility's ability to sign standard offers or negotiated agreements with the utility.

D.85-01-038, however, did not require that any of the "screening criteria" become part of the adopted standard offer terms. I.84-04-077 itself, while evolving to have a broader purpose, was also never suggested as being a proceeding in which changes to the standard offer or standard offer procedures would be addressed. We note, as exemplified by Edison's response to Energy Distribution's petition and PG&E's handling of the Oakland Scanvenger agreements, that simultaneous signing of an interconnection agreement (which would deal with line capacity) and a standard offer has never been required.

We feel that this circumstance, as well as a lack of clarity as to the precise

requirements each qualifying facility was to meet before signing a standard offer, may have led to qualifying facilities being inadequately notified of their altered responsibilities in signing the interim Standard Offer 4. Further, [32] our decision contains no direction to the utilities regarding the manner in which the qualifying facilities were to be informed of this change in their obligations.

Although many qualifying facility representatives participated in the development of the QFMP, we suspect that many others were not and never have been participants in our proceedings. The list of those filing petitions to challenge PG&E's inaction is revealing in this regard since many are first-time appearances before the Commission.

Given our prior orders and the circumstances surrounding our adoption of the

QFMP, we believe only one solution to the issue of the unsigned contracts is appropriate and reasonable. Specifically, we will direct the utilities, in particular PG&E, to sign all of the interim Standard Offer 4 contracts which were properly completed and signed by the qualifying facility and delivered or deposited in the mail to the utility before April 17. Compliance with the QFMP will also be required, but in the manner specified below.

PG&E has asserted that certain agreements were signed by the qualifying facilities before April 17, but not received by PG&E until after date. We believe that to be effective the acceptance must have been communicated to the offeror before the suspension was ordered. This requirement is adequately met by the offeree having had the agreement personally delivered or deposited in the mail before April 17. A postmark would serve as evidence of the date of mailing.

With respect to the QFMP screening criteria (project definition and preliminary development schedule), we believe that such requirements are valid and necessary prerequisites for every qualifying facility signing an interim Standard Offer 4, whether or not the project is located in a constrained area. To correct any potential deficiencies in D.85-01-038 which may have impacted a [33] qualifying facility's knowledge of those requirements, however, we will direct that the following procedures be used.

First, we address those qualifying facilities who tendered interim Standard Offer 4 agreements in the manner specified above and had complied with the QFMP screening criteria before April 17. For those qualifying facilities, the utility will be required to sign the agreements and return a copy of the executed contract to the qualifying facility

within one week of the effective date of this decision.

Second, for those qualifying facilities who had similarly tendered signed interim Standard Offer 4 agreements to the utility before April 17, but had not yet complied with or completed the QFMP screening criteria, we find that the qualifying facility's signature on the agreement was not an effective acceptance of the standard offer. However, to cure any confusion resulting from D.85-01-038, we will allow these qualifying facilities 60 days from the effective date of this decision in which to comply with the QFMP screening criteria. We will direct the utilities to notify each of the affected qualifying facilities by writing within one week of the effective date of this order of the qualifying facility's obligation to comply with the QFMP screening criteria. The notice should include the exact information the qualifying facility

is to supply to the utility (project definition, including proof of site control and a preliminary development schedule) and the time period permitted for such compliance (60 days). It should further be explained that the qualifying facility's signature on its tendered agreement will not become valid until these requirements are met.

Upon submission of the necessary information by the qualifying facility, the utilities will be directed to indicate in writing to the qualifying facility whether it has complied with the QFMP screening criteria. We will direct that this notice is to be sent within five days of receipt of the necessary information. In [34] the event of noncompliance, the utility will be required to specify the shortcoming, with the qualifying facility being given any remaining part of the 60-day period to cure its submittal. Should the utility determine that the qualifying

facility has complied, the qualifying facility's signature on the agreement will become immediately valid and the utility will be required to sign the agreement and return a copy of the executed contract to the qualifying facility within one working day of the utility's compliance determination.

Our requirement of compliance with the QFMP reflects our continued support for the procedure not only as a means of establishing priorities for scarce line capacity, but also for determining the viability of each qualifying facility project. The knowledge gained from the QFMP has proved critical in recent months, especially with respect to resource planning. We note that the suspension of interim Standard Offer 4 has largely been in response to concerns that available capacity from qualifying facilities could exceed utility needs. This circumstance is a significant factor in our efforts to

ensure that the interests of ratepayers are adequately considered. The concept of ratepayer indifference, which has guided us in the pricing of qualifying facility power, would be lost if the cost of accepting that power were to exceed rather than avoid utility capacity and energy costs.

An accurate assessment of qualifying facility development can only be achieved if we have a mechanism for more precisely determining when and whether a qualifying facility will become operational. The QFMP, while not required in the earlier stages of qualifying facility development, is now necessary for this Commission to make such a determination.

For this reason, not only we will require the presently affected qualifying facilities to comply with the QFMP screening criteria, but we will also consider making all of the QFMP [35] requirements part of all four

standard offers. To this end, we will direct the consolidation of A.82-04-44, et al. (Standard Offer 4) with A.82-03-26, et al. (Standard Offers 1, 2 and 3) for the purpose of intiating a comment procedure on the addition of the QFMP requirements to the standard offers. These comments should specifically address the inclusion of such screening criteria as proof of site control, development schedule, and project fee as conditions precedent to a qualifying facility signing a standard offer and the other milestones in the QFMP as conditions for maintaining the validity of the standard offer contract. These comments will be due no later than August 1, 1985.

We are interested in keeping the scope of the above inquiry as narrow as possible. This procedure should not be looked upon as a means of reexamining other standard offer terms. The sole purpose of the proceeding will be to

consider appropriate prerequisites for entering and conditions for maintaining a standard offer along the lines of the QFMP. The Commission will consider any specifically proposed contract language to effect this purpose as well as limitations on the response time of the utility in indicating compliance or noncompliance with the screening prerequisites.

Despite our recognition of the value of adding QFMP requirements to the standard offer, we wish to emphasize that the QFMP imposes currently effective screening criteria on qualifying facilities. Therefore, during the pendency of our comment procedure, we will direct each utility to notify every qualifying facility which seeks to sign any effective standard offer or negotiate a related agreement of the qualifying facility's current obligations under the QFMP.

Our preceding conclusions regarding the tendered agreements have, of course, been directed to those qualifying facilities who have signed standard offers. Still at issue are the status of those agreements signed before April 17 which contained nonstandard terms, [36] reflected an attempt to switch between standards offers, or related to the outcome of another proceeding (Cogeneration Services).

With respect to the nonstandard agreement based on interim Standard Offer 4, we believe that our approach discussed above for the standard offers is also reasonable for fully negotiated agreements. Such agreements have been the subject of three of the petitions for modification reviewed in this decision - Oakland Scavengers, Nove, and Combustion Engineering. In each case, the nonstandard terms had been accepted by both parties (the qualifying facility and PG&E) and an agreement embodying these terms had been completed and signed by the qualifying facility and

delivered to the utility before April 17. In these cases, the parties had achieved a "meeting of the minds" prior to the suspension of the interim standard offer. We will, therefore, authorize the utility to sign these agreements and any other negotiated agreement based on interim Standard Offer 4 which meets similar criteria - nonstandard terms accepted by both parties and an agreement embodying the accepted terms which has been fully executed by the qualifying facility and delivered or mailed to the utility before April 17. Our requirements regarding compliance with the QFMP in the manner described above will also be imposed on these projects.

Contract switching related to Standard Offer 4 was addressed in detail in D.83-09-054. Not only was switching from Standard Offer 4 prohibited, unless permitted by the contract or undertaken at the end of the contract term, but a similar rule was

announced for those seeking to switch to interim Standard Offer 4. (D.83-09-054, p. 17.) Under these circumstances, we believe that it is reasonable to adopt Public Staff's position that any switching related to Standard Offer 4 must meet the guidelines of D.83-09-054. To be effective the switch must therefore be one permitted under that order or the terms of the agreement and completed and signed by the qualifying facility, with delivery to the utility, before April 17. [37] Finally, we address two "special cases" - Cogeneration Services and Energy Distribution. PG&E suggests that the Cogeneration Services' projects are impeded by more than its petition for modification of D.84-08-037. Nevertheless, we find that our decision on the petition will answer the threshold question of the projects' eligibility for interconnection and the QFMP. Should Cogeneration Services be authorized to

participate in the QFMP, the projects will be required to comply with all standard offer and QFMP requirements as described above to become valid agreements with PG&E.

With respect to Energy Distribution, that party has alleged that it attempted to enter agreements with Edison in December 1984, but was thwarted by Edison's policy of requiring simultaneous signing of both interconnection and purchase power agreements. Edison denies this policy, but claims the agreements are not valid because of Energy Distribution's failure to meet the QFMP requirements. We note one major problem with Edison's argument - the QFMP requirements were not in effect when Energy Distribution first sought to contract with Edison. Further, Edison does not contest in any way Energy Distribution's assertion that it had provided all of the information required as of December 1984.

It is not clear from either Edison's or Energy Distribution's petitions whether actual agreements existed or were signed by Energy Distribution relating to its projects prior to January 1 or April 17, 1985. However, in light of Edison's sole complaint that Energy Distribution has failed to comply with the QFMP, we will include Energy Distribution in our order requiring execution of tendered standard offer agreements. We will require Energy Distribution, however, to meet the QFMP procedures, as in the case of all of the other qualifying facilities and petitioners, as previously specified in this decision.

[38] Findings of Fact

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[44] 34. Interim Standard Offer 4 agreements tendered by Cogeneration Services, Inc. and Hydropool are impacted by the outcome of the Commission's decision on PG&E's petition for modification of D.84-08-037. The ability of

Cogeneration Services, Inc. and Hydropool to enter such agreements should therefore be determined by the decision in that proceeding.

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Conclusions of Law

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[47] 6. The status of any interim Standard Offer 4 agreements tendered by Cogeneration Services, Inc. and Hydropool to PG&E prior to April 17, 1985, shall be determined by the outcome of the Commission's decision on PG&E's petition for modification of D.84-08-037 in I.84-04-077.

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